IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10161 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJULABAHEN @MEENABEN KANJIBHAI - Petitioner(s)
Versus
DY POLICE COMMISSIONER ZONE-V & 1 - Respondent(s)

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Appearance :
MR VM DHOTRE for Petitioner(s) : 1,
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/01/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order

quashing and setting aside the show cause notice dated 15.5.1996 issued by the respondent No.1 and also the decision taken to proceed ahead with the departmental proceedings by order dated 14.8.1996 holding that for the very charge in the criminal proceedings, the departmental proceedings is not just and proper.

2. It was the contention on behalf of the petitioner that for the very charge for which, the departmental inquiry was initiated and the show cause notice was issued, a criminal case was pending before the Competent Criminal Court and therefore, the authority should not have initiated the departmental proceedings for the same charges.

3. While admitting the present special civil application, the learned Single Judge of this Court passed the following interim order on 19.2.1997 :-

> *"Mr. D.A.Bambhania, learned AGP, has placed reliance on the Supreme*

Court decision in STATE OF RAJASTHAN v. B.K.MEENA, 1996 (8) SCC, p.684. In the facts and circumstances of the case, prima facie, I find that the misconduct for which the inquiry is being held against the petitioner has no direct relationship with her misconduct in relation to employment. The allegations are with reference to an offence punishable under the provisions of the Indian Penal Code, for which, she is facing the criminal prosecution and any decision in that departmental inquiry is likely to be used to prejudice her defence in the criminal case. In the facts and circumstances of the case, it is ordered that the departmental inquiry against the petitioner can go ahead, but the final order in the inquiry shall not be passed against the petitioner without taking into consideration the outcome of the criminal case and the permission of this Court."

4. Shri Dipen Desai, learned AGP has submitted that after the aforesaid order dated 19.12.1997,

departmental inquiry was proceeded further and it has been decided to impose the penalty of withholding of one increment for which, show cause notice has been issued on 10.11.2006 and the said show cause notice is issued after taking into consideration the outcome of the criminal case i.e. the acquittal in the criminal case. He has also further submitted that while passing the final order, the aforesaid aspect will also be considered and will be reflected in the order, that may be passed by the Competent Authority. The respondents are directed to act accordingly. If after hearing the petitioner any order of penalty is imposed, it will be open for the petitioner to challenge the same before the appropriate forum and/or before this Court, which can be dealt with in accordance with law and on merits.

5. With these, the present special civil application is disposed of. Rule discharged. No costs.

[M.R.Shah, J.]

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